

### **Remarks**

Claims 8, 12-15, 19-22 and 60-67 were pending and rejected in this application. Claims 12-15, 19, 22, 61, 62, 64, 65 and 67 are amended herein. Applicant hereby requests cancellation of claims 8, 60, 63, and 66. Thus, after entry of this amendment claims 12-15, 19-22, 61-62, 64-65 and 67 will be pending in this application.

Applicant believes that the claims as amended are clearly distinguishable over all of the references of record. Reconsideration of claims 12-15, 19-22, 61-62, 64-65 and 67 in light of the amendments and arguments below is respectfully requested. The amendments are believed to place the remaining claims in condition for allowance. Accordingly, entry of the amendments to the claims is appropriate at this juncture.

### **NO NEW MATTER IS INTRODUCED BY THE AMENDMENTS TO THE CLAIMS.**

No new matter is presented by way of the amendments to any of claims 12-15, 19, 22, 61, 62, 64, 65 and 67. The subject matter of previously presented claims 12 and 66 has been consolidated into currently amended claim 12, which has been rewritten in independent form. Claims 13-15, 19-22, 61-62, 64-65 and 67 have been amended as necessary to reflect dependency from amended claim 12, and to insure proper antecedent basis. Additionally, the typographical error "phosphothioate" has been corrected to "phosphorothioate in claims 64 and 65. Literal support for the amendments to the claims is replete throughout the specification, and in claims as originally filed.

The amendments to and cancellation of claims are presented solely in order to expedite prosecution, and nothing in these amendments is to be construed to indicate agreement with any rejection or argument of record. Applicants expressly reserve the right to pursue subject matter commensurate with the previously presented claims in a separate application.

### **INFORMATION DISCLOSURE STATEMENT**

Applicants thank the Examiner for his consideration of the references submitted in an Information Disclosure Statement filed October 15, 2004. In accordance with the Examiner's request, Applicants are submitting new copies of the references cited in a previously submitted Information Disclosure Statement filed April 19, 2004 (stamped received by the USPTO April 22, 2004). A

courtesy copy of the 1449 Form submitted April 19, 2004 is provided herewith for the Examiner's convenience. These references should not be construed as constituting a new Information Disclosure Statement. Because the copies are being provided to replace copies of the references previously submitted, but not found in the USPTO file, Applicants respectfully request that these references be considered and cited in any patent issuing from this application.

THE CLAIMS AS AMENDED ARE NOT ANTICIPATED BY HARTMANN ET AL.

Claims 8, 13-15, 19-22, 60-65 and 67 were rejected under 35 U.S.C. 102(a) or 102(e) as being anticipated by Hartmann et al. (WO 01/22990). Applicants respectfully disagree with this rejection. Claims 12 and 66 were deemed to be free of this prior art. However, in order to expedite prosecution, the subject matter of previously presented claims 12 and 66 has been consolidated into currently amended claim 12, which has been rewritten in independent form. Claims 13-15, 19-22, 61-62, 64-65 and 67 have been amended as necessary to reflect dependency from amended claim 12, and to insure proper antecedent basis.

In light of these amendments to the claims, Applicants submit that the rejection is rendered moot. All claims are now in condition for allowance.

OBVIOUSNESS TYPE DOUBLE PATENTING

Claims 8, 12-15, 19-22 and 60-67 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of copending application No. 09/958,713. Applicant traverses and respectfully requests reconsideration and withdrawal of this rejection in light of the remarks below.

US Patent Application 09/958,713 ("the '713 application") is a U.S. National Phase Application (filed October 11, 2001) of PCT Application PCT/US00/09839, filed April 12, 2000, which claims priority to Provisional Application No. 60/128,898, filed April 12, 1999. As of the present date, no claims of the '713 application have been found to be allowable.

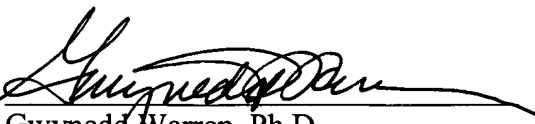
According to the MPEP § 804B, “[i]f the ‘provisional’ double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent.” In accordance with MPEP § 804B, the provisional double patenting rejection of claims 12-15, 19-22, 61-62, 64-65 and 67 over the ‘713 application should be withdrawn. Should claims in the ‘713 application be deemed to be obvious over claims issued from the subject application (that is, claims 12-15, 19-22, 61-62, 64-65 and 67 of the subject application), an obviousness-type double patenting rejection of the claims in the ‘713 application over such issued claims for this case would be appropriate in that case. However, it is not proper to maintain a provisional obviousness-type double patenting rejection of claims 12-15, 19-22, 61-62, 64-65 and 67, or to require a terminal disclaimer in the present circumstances, because claims 12-15, 19-22, 61-62, 64-65 and 67 are now in condition for allowance, and the claims of the ‘713 application have not yet issued. Accordingly, the rejection must be withdrawn.

#### CONCLUSION

Applicants believe that claims 12-15, 19-22, 61-62, 64-65 and 67 are now in condition for allowance. Therefore, a Notice of Allowance at an early date is respectfully requested. In the event that any issues remain, the Examiner is requested to contact the undersigned prior to the preparation of another written action.

Respectfully submitted,

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